

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Donaghy	Team: Squad #2	CCRB Case #: 201905282	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 06/17/2019 12:48 PM	Location of Incident: 1142 College Avenue	Precinct: 44	18 Mo. SOL 12/17/2020	EO SOL 8/3/2021	
Date/Time CV Reported Mon, 06/17/2019 2:21 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 06/17/2019 2:21 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Anthony Arace	00317	966443	044 PCT
2. POF Belkys Bernard-Abreu	05998	929683	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Anthony Arace	Discourtesy: Police Officer Anthony Arace spoke discourteously to § 87(2)(b)	
B.POF Belkys Bernard-Abreu	Abuse: Police Officer Belkys Bernard-Abreu questioned § 87(2)(b)	
C.POM Anthony Arace	Abuse: Police Officer Anthony Arace questioned § 87(2)(b)	
D.POF Belkys Bernard-Abreu	Abuse: Police Officer Belkys Bernard-Abreu threatened to issue a summons to § 87(2)(b)	

Case Summary

On June 17, 2019, § 87(2)(b) reported the following complaint via an online form with the CCRB.

At approximately 12:45 p.m. on June 17, 2019, § 87(2)(b) was working his delivery route as a § 87(2)(b) on College Avenue between East 166th Street and East 167th Street in the Bronx. § 87(2)(b) double parked his § 87(2)(b) van in front of 1142 College Avenue and left his vehicle unattended for several minutes while he delivered a package, and by the time he returned to his § 87(2)(b) van multiple vehicles had become stuck on College Avenue behind it. Police Officer Anthony Arace approached § 87(2)(b) after he had re-entered his § 87(2)(b) van and allegedly told § 87(2)(b) to "Move this fucking vehicle" (**Allegation A: Discourtesy – Word, § 87(2)(g)**). § 87(2)(b) moved his § 87(2)(b) van, parked it in a position where it was not obstructing traffic, and then returned on foot to talk with Police Officer Arace. During that conversation Police Officer Arace and his partner, Police Officer Belkys Bernard-Abreu, asked § 87(2)(b) for his name, identification, and for details related to his employment (**Allegation B: Abuse of Authority – Question, § 87(2)(g)**) (**Allegation C: Abuse of Authority – Question, § 87(2)(g)**). Police Officer Bernard-Abreu then allegedly threatened § 87(2)(b) with a summons (**Allegation D: Abuse of Authority – Threat of summons, § 87(2)(g)**). § 87(2)(b) walked away without being arrested or issued a summons.

The investigation obtained video footage from the body-worn camera (BWC) of Police Officer Belkys Bernard-Abreu, which is attached to IA # 51 (Board Review 01), and of Police Officer Anthony Arace, which is attached to IA # 52 (Board Review 02). The BWC footage is summarized in IA # 64 (Board Review 03).

Findings and Recommendations

Allegation (A) Discourtesy – Police Officer Anthony Arace spoke discourteously to § 87(2)(b)

§ 87(2)(b) provided a telephone statement to the CCRB on June 20, 2019 (Board Review 04). § 87(2)(b) was interviewed in-person by the CCRB at the offices of New York City Council Member Vanessa L. Gibson on July 9, 2019. Police Officer Anthony Arace and Police Officer Belkys Bernard-Abreu were interviewed at the CCRB on August 8, 2019. § 87(2)(b) who is § 87(2)(b)'s cousin and a witness to this incident, provided a telephone statement to the CCRB on August 12, 2019 (Board Review 05).

§ 87(2)(b) stated that at approximately 12:45 p.m. on June 17, 2019, he was working in the rear of his parked § 87(2)(b) van on College Avenue in the Bronx between East 166th Street and East 167th Street when he suddenly heard a banging on the window of the closed driver's side door of his van. When § 87(2)(b) came to the window, he saw that Police Officer Arace was standing outside of § 87(2)(b)'s driver's side door. In his CCRB interview § 87(2)(b) state that at this point Police Officer Arace told § 87(2)(b) to, "Move this fucking truck." In his telephone § 87(2)(b) provided Police Officer Arace's statement as, "Move your fucking

truck.” § 87(2)(b) opened his driver’s side door and stepped out into the street in order to confront Police Officer Arace, asking Police Officer Arace to repeat what he had just said. Police Officer Arace did not respond, instead walking away from § 87(2)(b)

During this interaction § 87(2)(b) was in the middle of a phone call with his cousin, § 87(2)(b) via wireless earbuds that are visible in the photograph taken of § 87(2)(b) during his July 9, 2019, CCRB interview (Board Review 06). In § 87(2)(b)’s telephone statement to the CCRB he stated that he had been able to hear Police Officer Arace speaking to § 87(2)(b). Police Officer Arace had told § 87(2)(b) “Move your fucking truck.” § 87(2)(b) replied by asking Police Officer Arace who he was talking to and to repeat what he had said, and Police Officer Arace then stated, “I’m fucking talking to you, move your fucking truck.” At this point § 87(2)(b) asked Police Officer Arace for his shield number, but § 87(2)(b) did not hear Police Officer Arace respond to that request.

In his statement to the CCRB Police Officer Arace stated that at the time he approached § 87(2)(b)’s vehicle the § 87(2)(b) van was causing a substantial traffic jam on College Avenue. Police Officer Arace approached § 87(2)(b) § 87(2)(b) vehicle and knocked on the driver’s side window to get his attention. § 87(2)(b) who had been in the rear of the vehicle, came to the window, at which point Police Officer Arace asked § 87(2)(b) to move his vehicle. § 87(2)(b) replied, “Did I do something to offend you?” Police Officer Arace stated, “No, I just need you to move your truck,” and § 87(2)(b) replied, “Make me.” Police Officer Arace stated, “Look, guy, just move the truck,” and then Police Officer Arace walked away. Police Officer Arace did not curse at § 87(2)(b) during this interaction, and § 87(2)(b) did not exit his § 87(2)(b) vehicle.

Police Officer Bernard-Abreu stated that she was unable to see or hear any part of the interaction between Police Officer Arace and § 87(2)(b) due to being inside her NYPD vehicle a significant distance away from § 87(2)(b) § 87(2)(b) van.

The BWC footage audio does not capture this interaction as Police Officer Arace and Police Officer Bernard-Abreu only began recording at a later point during this incident.

§ 87(2)(g)

Allegation (B) Abuse of Authority – Police Officer Belkys Bernard-Abreu questioned § 87(2)(b)

Allegation (C) Abuse of Authority – Police Officer Anthony Arace questioned § 87(2)(b)

Allegation (D) Abuse of Authority – Police Officer Belkys Bernard-Abreu threatened to issue a summons to § 87(2)(b)

It is undisputed that before the interaction described in Allegation A § 87(2)(b) § 87(2)(b) vehicle was parked in such a way that it caused a substantial obstruction of traffic on College

Avenue. It is further undisputed that § 87(2)(b) complied with Police Officer Arace's request to move his § 87(2)(b) van, and that § 87(2)(b) drove it approximately one block to a location north of East 167th Street. After parking his § 87(2)(b) van in a location where it was not obstructing traffic, § 87(2)(b) returned on foot to where Police Officer Arace and Police Officer Bernard-Abreu were sitting in a parked NYPD vehicle. As § 87(2)(b) approached them Police Officer Arace and Police Officer Bernard-Abreu exited their NYPD vehicle, and in the ensuing interaction § 87(2)(b) Commdore requested and received the names and shield numbers of both Police Officer Arace and Police Officer Bernard-Abreu. Police Officer Bernard-Abreu then asked § 87(2)(b) for his name, which § 87(2)(b) provided.

During his CCRB interview § 87(2)(b) stated that after Police Officer Bernard-Abreu asked for his name she further asked him for his license, while stating that she could have given § 87(2)(b) a ticket for double parking and obstructing traffic. § 87(2)(b) replied by stating that he did not have a license on his person, and therefore could not provide it. Police Officer Bernard-Abreu then activated her BWC and asked again for § 87(2)(b)'s license, a request which § 87(2)(b) again refused. Police Officer Bernard-Abreu stated, "Next time we 'gon see," and § 87(2)(b) walked away from Police Officer Arace and Police Officer Bernard-Abreu without being arrested, given a summons, or otherwise impeded from leaving.

During his CCRB interview Police Officer Arace stated that Police Officer Bernard-Abreu asked § 87(2)(b) for his photo identification, and § 87(2)(b) did not provide it.

During her CCRB interview Police Officer Bernard-Abreu stated that § 87(2)(b) was not asked for his license, but that he was asked for the vehicle number of his § 87(2)(b) van and which post office he worked at. When asked why she had requested this information from § 87(2)(b) Police Officer Bernard-Abreu stated that she was considering going to the post office to speak to someone about § 87(2)(b)'s demeanor, or to otherwise file a complaint about his behavior as a postal worker. Police Officer Bernard-Abreu stated that she told § 87(2)(b) he could have received a summons for double-parking and obstructing traffic.

Police Officer Bernard-Abreu's BWC footage of this incident, located in IA # 51 (Board Review 01) and summarized in IA # 64 (Board Review 03), shows that § 87(2)(b) was asked for his license and for information about his employment at § 87(2)(b). At the timecode 0:30 Police Officer Bernard-Abreu has already exited her NYPD vehicle, has begun writing in what appears to be her memo book, and is standing with § 87(2)(b) and Police Officer Arace on the sidewalk on the west side of College Avenue. § 87(2)(b) can be heard stating his name to Police Officer Bernard-Abreu, and Police Officer Arace then asks if § 87(2)(b) has a license on him. § 87(2)(b) states that he does not.

Police Officer Bernard-Abreu asks § 87(2)(b) where he works, but § 87(2)(b) begins to walk away, stating, "You know where I work at." Police Officer Bernard-Abreu asks § 87(2)(b) to identify his truck, and § 87(2)(b) tells her to walk up to where it is parked and check for herself as he does not know its vehicle number. § 87(2)(b) continues to walk away as Police Officer Bernard-Abreu asks § 87(2)(b) to identify which Post Office he works at, which § 87(2)(b) answers by telling PO Bernard-Abreu that she can, "Find out." Neither

Police Officer Bernard-Abreu nor Police Officer Arace follow § 87(2)(b) as he continues to walk away.

The investigation obtained photographs of the incident from a surveillance camera located at 1142 College Avenue in the Bronx, which are stored in IA # 43 (Board Review 07). These photos show a § 87(2)(b) vehicle, which the investigation has identified as § 87(2)(b) § 87(2)(b) vehicle, double parked and obstructing traffic on College Avenue.

New York State Vehicle and Traffic law, Title VII, Article 32, Section 1202 (1) (a) (Board Review 08) prohibits stopping, standing, or parking on the roadway side of any vehicle stopped, stood, or parked at the edge or curb of a street. § 87(2)(b)

In People v. DeBour, 40 N.Y.2d 210 (1976) (Board Review 10), the courts determined that, for an officer to exercise the common-law right to inquire, there must exist founded suspicion that criminal activity is afoot. This suspicion can be generated by knowledge possessed by officers in the moment or by a reasonable inference. In this case it is undisputed that Police Officer Arace and Police Officer Bernard-Abreu observed § 87(2)(b) § 87(2)(b) unattended § 87(2)(b) vehicle, double-parked and obstructing traffic in violation of New York State Vehicle and Traffic law.

It is undisputed that Police Officer Bernard-Abreu stated to § 87(2)(b) that he could receive a summons for double-parking and obstructing traffic. Though BWC footage shows both Police Officer Arace and Police Officer Bernard-Abreu asking § 87(2)(b) questions about his § 87(2)(b) vehicle, his employment, and his identification, it is undisputed that § 87(2)(b) was not in any way prevented from leaving the scene or otherwise stopped. § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) § 87(2)(b)
 - (b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b)
- Police Officer Anthony Arace has been a member of service for less than one year and is the subject in two CCRB complaints, including this one, with three total allegations. Police Officer Arace's other CCRB case is still open.

- Police Officer Belkys Bernard-Abreu has been a member of service for 17 years. This is the first complaint in which she has been a subject.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- § 87(2)(c) (impair contract awards or CBAs), § 87(2)(b)
- On September 26, 2019, a FOIL request was filed with the Office of the New York City Comptroller for any Notice of Claim related to this incident. The reply will be attached to this case upon receipt.

Squad No.: 2

Investigator: _____

Signature	Print Title & Name	Date
-----------	--------------------	------

Squad Leader: _____

Signature	Print Title & Name	Date
-----------	--------------------	------

Reviewer: _____

Signature	Print Title & Name	Date
-----------	--------------------	------